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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

THE INSTITUTE OF MEDICAL
EDUCATION, INC.,

Plaintiff,

v.

WESTERN ASSOCIATION OF
SCHOOLS AND COLLEGES, and DOES
1 THROUGH 10 INCLUSIVE,

Defendants.

CASE NO. CV11-05755 PSG

**DEFENDANT WESTERN ASSOCIATION
OF SCHOOLS AND COLLEGES
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Complaint Filed: 11/30/11

[Assigned for All Purposes to Magistrate Judge Paul
Singh Grewal in Courtroom 5, 4th Floor]

Discovery Cutoff: None Set
Motion Cutoff: None Set
Trial Date: None Set

COMES NOW Defendant WESTERN ASSOCIATION OF SCHOOLS AND
COLLEGES and in response to Plaintiff's First Amended Complaint admits, denies,
and/or alleges the following:

NATURE OF ACTION

1. In answering paragraph 1 of Plaintiff's Complaint, Defendant admits that this is
an action for damages against WASC and Does 1 through 10. Defendant, however,
denies the remaining allegations contained within paragraph 1 of Plaintiff's complaint.

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THE PARTIES

2. In answering paragraph 2 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

3. In answering paragraph 3 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

JURISDICTION AND VENUE

4. In answering paragraph 4 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

FACTUAL BACKGROUND

5. In answering paragraphs 5 through 10 of Plaintiff's Complaint, Defendant lacks sufficient knowledge and information from which to admit or deny the allegations contained therein and on that basis denies same.

6. In answering paragraph 11 of Plaintiff's Complaint, Defendant lacks sufficient knowledge and information from which to admit or deny the allegations contained therein and on that basis denies same.

7. In answering paragraph 12 of Plaintiff's Complaint, Defendant lacks sufficient knowledge and information from which to admit or deny the allegations contained therein and on that basis denies same.

8. In answering paragraph 13 of Plaintiff's Complaint, Defendant lacks sufficient knowledge and information from which to admit or deny the allegations contained therein and on that basis denies same.

9. In answering paragraph 14 of Plaintiff's complaint, Defendant admits the allegations contained therein.

10. In answering paragraph 15, lines 4-5, of Plaintiff's Complaint Defendant admits that a letter dated September 23, 2010 was sent to IME, but lacks sufficient information or knowledge regarding the remaining allegations contained therein and on that basis denies same. In answering lines 5, beginning with "While a number..." through line 8,

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1 Defendant lacks sufficient knowledge and information from which to admit or deny the
 2 allegations contained therein and on that basis denies same.

3 11. In answering paragraph 16 of Plaintiff's Complaint, Defendant denies the
 4 allegations contained therein.

5 12. In answering paragraph 17 of Plaintiff's Complaint, Defendant lacks sufficient
 6 knowledge and information from which to admit or deny the allegations contained therein
 7 and on that basis denies same.

8 13. In answering paragraph 18 of Plaintiff's Complaint, Defendant lacks sufficient
 9 knowledge and information from which to admit or deny the allegations contained therein
 10 and on that basis denies same.

11 14. In answering paragraph 19 of Plaintiff's Complaint, Defendant lacks sufficient
 12 knowledge and information from which to admit or deny the allegations contained therein
 13 and on that basis denies same.

14 15. In answering paragraph 20 of Plaintiff's Complaint, Defendant denies the
 15 allegations contained therein.

16 16. In answering paragraph 21 of Plaintiff's Complaint, Defendant lacks sufficient
 17 knowledge and information from which to admit or deny the allegations contained therein
 18 and on that basis denies same.

19 17. In answering paragraph 22 of Plaintiff's Complaint, Defendant lacks sufficient
 20 knowledge and information from which to admit or deny the allegations contained therein
 21 and on that basis denies same.

22 18. In answering paragraph 23 of Plaintiff's Complaint, Defendant denies the
 23 allegations contained therein.

24 19. In answering paragraphs 24-28 of Plaintiff's Complaint, Defendant lacks
 25 sufficient knowledge and information from which to admit or deny the allegations
 26 contained therein and on that basis denies the allegations contained therein.

27 20. In answering paragraph 29 of Plaintiff's Complaint, Defendant denies the
 28 allegations contained therein.

1 21. In answering paragraph 30 of Plaintiff's Complaint, Defendant denies the
2 allegations contained therein.

3 **FIRST CAUSE OF ACTION**

4 **Denial of Common Law Due Process**

5 22. In answering paragraph 31 of Plaintiff's Complaint, Defendant incorporates the
6 preceding admissions and denials contained within paragraphs 1-21 as though fully set
7 forth herein.

8 23. In answering paragraphs 32-38, Defendant denies each and every allegation
9 contained therein.

10 **SECOND CAUSE OF ACTION**

11 **Breach of Contract**

12 24. In answering paragraph 39 of Plaintiff's Complaint, Defendant incorporates the
13 preceding admissions and denials contained within paragraphs 1-23 as though fully set
14 forth herein.

15 25. In answering paragraphs 40-43, Defendant denies each and every allegation
16 contained therein.

17 **THIRD CAUSE OF ACTION**

18 **Breach of the Implied Covenant of Good Faith & Fair Dealing**

19 26. In answering paragraph 44 of Plaintiff's Complaint, Defendant incorporates the
20 preceding admissions and denials contained within paragraphs 1-25 as though fully set
21 forth herein.

22 27. In answering paragraphs 45-47 of Plaintiff's Complaint, Defendant denies
23 each and every allegation contained therein.

24 **FOURTH CAUSE OF ACTION**

25 **Intentional Interference with Contract (Student Enrollment Agreements)**

26 28. In answering paragraph 48 of Plaintiff's Complaint, Defendant incorporates the
27 preceding admissions and denials contained within paragraphs 1-27 as though fully set
28 forth herein.

29. In answering paragraphs 49-54 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

FIFTH CAUSE OF ACTION

Negligent Interference with Prospective Business or Economic Advantage

30. In answering paragraph 55 of Plaintiff's Complaint, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-29 as though fully set forth herein.

31. In answering paragraphs 56-59, Defendant denies each and every allegation contained therein.

SIXTH CAUSE OF ACTION

Promissory Estoppel

32. In answering paragraph 60, Defendant incorporates the preceding admissions and denials contained within paragraphs 1-31 as though fully set forth herein.

33. In answering paragraphs 61-66, Defendant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

34. Defendant is informed and believes, and on that basis alleges that the Complaint, in whole or in part, fails to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

35. Defendant is informed and believes, and on that basis alleges that the Complaint, and each and every claim contained therein, is barred by the applicable statute of limitation.

THIRD AFFIRMATIVE DEFENSE

36. Defendant is informed and believes, and on that basis alleges that Plaintiff has failed to mitigate their damages with respect to any and all damages proximately and/or actually caused by the actions or incidents underlying the Complaint.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 37. Defendant is informed and believes, and on that basis alleges that Plaintiff's
3 Complaint is barred by the doctrine of laches, estoppel, waiver and/or unclean hands.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 38. Defendant is informed and believes, and on that basis alleges that any and all
6 injuries, losses, or damages, if any, were the direct and proximate result of an
7 unavoidable incident, act of God, or resulted from natural causes, without fault or liability
8 on the part of this answering Defendant.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 39. Defendant is informed and believes, and on that basis alleges that Plaintiff has
11 no standing to bring any action against this responding Defendant.

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 40. Defendant is informed and believes, and on that basis alleges that Plaintiff's
14 action is barred by the failure to join in a timely fashion, indispensable and/or necessary
15 parties to the action

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 41. Defendant is informed and believes, and on that basis alleges that the
18 underlying agreements are unenforceable due to a lack of consideration.

19 **NINTH AFFIRMATIVE DEFENSE**

20 42. Defendant is informed and believes, and on that basis alleges that Plaintiff's
21 claims are barred due to mistake and/or fraud concerning the terms of the underlying
22 agreements.

23 **TENTH AFFIRMATIVE DEFENSE**

24 43. Defendant is informed and believes, and on that basis alleges that the
25 agreements referred to in the Complaint are unenforceable and/or void as against public
26 policy.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 44. Defendant is informed and believes, and on that basis alleges that Plaintiff has
3 waived their right to enforce the underlying agreements by breaching the terms of those
4 agreements.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 45. Defendant is informed and believes, and on that basis alleges that the
7 underlying agreements have been rescinded.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 46. Defendant is informed and believes, and on that basis alleges that Plaintiff has
10 acted so as to frustrate the purpose of the underlying agreements.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 47. Defendant is informed and believes, and on that basis alleges that this
13 responding Defendant has satisfied its obligations pursuant to the underlying
14 agreements.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 48. Defendant is informed and believes, and on that basis alleges that Plaintiff are
17 estopped by their own acts and conduct from pursuing the claims alleged in the
18 Complaint.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 49. Defendant is informed and believes, and on that basis alleges that at all times
21 relevant, its conduct was justified with regard to the claims alleged in the Complaint.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 50. Plaintiff has failed to state facts sufficient to give rise to a claim against
24 Defendant for punitive damages.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 51. This action is barred for lack of subject matter jurisdiction.

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1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 52. This action is barred because Plaintiff has failed to exhaust the administrative
3 remedies provided to it through Defendant's organization or provided by law.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 53. This action is barred because it is not ripe for decision or because the action
6 is now moot.

7 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

8 54. Plaintiff's complaint is barred by the doctrine of res judicata or collateral
9 estoppel.

10 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

11 55. Plaintiff's action is barred because the alleged wrongful acts or omissions are
12 based on the exercise of a discretionary duty or discretionary function on the part of the
13 public defendant. Accordingly, defendant is immunized from liability as a matter of law.

14 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

15 56. Plaintiff was provided with adequate and due notice by Defendant and the
16 U.S. Department of Education.

17 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

18 57. Defendant presently has insufficient knowledge or information upon which to
19 form a belief as to whether Defendant may have any additional affirmative defenses to
20 the Complaint and/or all of the claims stated therein. Accordingly, Defendant hereby
21 reserves its right to assert additional affirmative defenses in the event that further
22 development, events and/or discovery indicate such assertion would be appropriate.

23 WHEREFORE, Defendant prays for relief as follows:

- 24 (a) That Plaintiff take nothing against this answering Defendant;
25 (b) That this answering Defendant have and recover its costs of suit;
26 (c) For such other and further relief as the Court may deem just and proper.

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JURY DEMAND

Defendant hereby demands a trial by jury of all issues so triable.

DATED: November 30, 2012

WOOD, SMITH, HENNING & BERMAN LLP

By:



ALICIA R. KENNON
EUGENE ZINOVYEV

Attorneys for Defendant WESTERN
ASSOCIATION OF SCHOOLS AND COLLEGES

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PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

I am employed in the County of Contra Costa, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1401 Willow Pass Road, Suite 700, Concord, California 94520-7982.

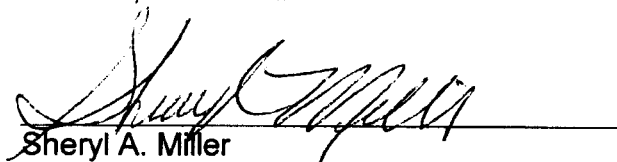
On November 30, 2012, I served the following document(s) described as **DEFENDANT WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED LIST

BY MAIL: I placed true copies of the foregoing document(s) enclosed in sealed envelopes addressed as shown on the Service List. I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Concord, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 30, 2012, at Concord, California.


Sheryl A. Miller

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SERVICE LIST

***The Institute of Medical Education, Inc. v. Western Association of
Schools and Colleges, et al.***

Case No. USDC-N (SJ) - CV11-05755 LHK

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